

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA

v.

ROBERT T. BROCKMAN

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Criminal No. 4:21-cr-00009

DISCOVERY PROTOCOL AS TO KEPKE SEARCH WARRANT PROCEEDS

Defendant ROBERT T. BROCKMAN, through counsel, having requested the production of material that may contain privileged information, specifically the unfiltered Attachment B Relevant Material described below, and the Court having ordered the production of said discovery, the parties agree to the following protocol.

1. This Protocol relates to hardcopy records and electronically stored information (“ESI”) obtained via a search warrants executed on August 14, 2018 at 1) a single residence located at 149 Sage Road, Houston, Texas 77056-1417; and 2) Unit 1034 of the “Public Storage” franchise located at the intersection of Southwest Fwy & Wilcrest, with a street address of 11770 Southwest Fwy., Houston, Texas 77031-3614 (the “Kepke Search Warrants”). The government will provide to Defendant in a useable format a copy of any paper and electronic records included in the Attachment B Relevant Material.
2. The government represents that as part of the execution of the Kepke Search Warrants, the records seized were provided to a Department of Justice Filter Team (“Filter Team”).

3. The government further represents that the seized records were segregated by the Filter Team in accordance with Attachments B to the search warrants and have not been provided to the prosecution team in this case. The resulting Attachment B Relevant Material, which were in documentary or hardcopy form, were then scanned by the Filter Team into an electronic format (.pdf format).
4. The government further represents that the Filter Team has not yet gone through the entirety of the Attachment B Relevant Material. Accordingly, these items have not yet been identified by the Filter Team as either: 1) non-privileged materials; or 2) privileged or potentially privileged materials.
5. Given the volume of the unfiltered Attachment B Relevant Material, a complete review of these materials by the Filter Team prior to production may unduly delay trial.
6. As ordered by the Court, the government, through the Filter Team, will produce the unfiltered Attachment B Relevant Material to Defendant. Production of this information does not constitute a waiver of any attorney-client privilege or work product protection that may attach to any of the materials or information contained within the unfiltered Attachment B Relevant Material.
7. Given that these unfiltered Attachment B Relevant Material may contain privileged information, Defendant's counsel agree to carefully consider whether any of the unfiltered material they or their client reviews is subject to any evidentiary privilege, including to an attorney/client or work product privilege held by a third party – other than Robert F. Smith who has waived his attorney/client and work product privilege

with regard to Kepke. Upon discovery of any item in the unfiltered Attachment B Relevant Material that may be subject to an evidentiary privilege, Defendant, and his counsel, agree to cease reviewing that item and notify the Filter Team of the item.

8. While Defendant will be receiving the unfiltered Attachment B Relevant Material, the prosecution team will not be receiving these materials. Accordingly, Defendant and his counsel, upon review of the unfiltered Attachment B Relevant Material that relate to Defendant, agree to provide the prosecution team with a privilege log containing a list of the items over which Defendant is asserting his own attorney-client or work-product privileges.
9. Defendant and his counsel further agree to provide a copy of any of the unfiltered Attachment B Relevant Material they intend to introduce as evidence in their case in chief at trial to the prosecution team. Such copies shall be provided at the time ordered by the Court for the exchange of trial exhibits.

We hereby consent to this Protocol and entry of an Order by the Court to incorporate its terms, if necessary.

Dated: February 5, 2021

/s/ Jason S. Varnado

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